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Attorneys for Plaintiff

FILED

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Ganesh A. Vishwanath

Plaintiff,

v.

Rosemary Melville, District Director,
U.S. Citizenship & Immigration Services,

Dr. Emilio T. Gonzalez, Director,
U.S. Citizenship & Immigration Services,

Michael Chertoff, Secretary
U.S. Department of Homeland Security

Alberto Gonzales, Attorney General
U.S. Department of Justice,

Robert Mueller, Director,
Federal Bureau of Investigations,

Defendants.

Civil No.

File No. A75-653-217
WSC*001445380

4420

MMC

COMPLAINT FOR DECLARATORY
JUDGMENT OF NATURALIZATION
UNDER 8 USC §§1447(b) and 1421(c)
AND WRIT OF MANDAMUS

**COMPLAINT FOR DECLARATORY JUDGMENT OF NATURALIZATION AND
WRIT OF MANDAMUS**

Plaintiff, by and through undersigned counsel, brings this complaint against Defendants, and
alleges as follows:

1 1. Plaintiff is an individual and resident of the United States who resides in the jurisdiction
2 of this Court. Plaintiff's claim to naturalization arises under 8 USC §1447(b) and 8 USC
3 §1421(c).

4 2. Defendant Rosemary Melville is the District Director of the U.S. Citizenship &
5 Immigration Service's ("USCIS") San Francisco District office, and is sued herein in her official
6 capacity. Defendant is charged by law with the obligation of adjudicating naturalization
7 applications within the San Francisco USCIS District pursuant to 8 USC §1421, 8 USC §1427, 8
8 CFR §103.1, 8 CFR §310.1 and 8 CFR §316.3.

9 3. Defendant Emilio T. Gonzalez, Director of USCIS, is an officer who oversees the
10 activities of USCIS and is sued herein in his official capacity. Defendant is charged by law with
11 the obligation of adjudicating naturalization applications pursuant to 8 USC §1421, 8 USC
12 §1427, 8 CFR §103.1, 8 CFR §310.1 and 8 CFR §316.2.

13 4. Defendant Michael Chertoff, Secretary of the Department of Homeland Security, is the
14 officer who oversees the activities of USCIS. He is charged by law with the obligation of
15 adjudicating applications for permanent residence.

16 5. Defendant Alberto Gonzales, U.S. Attorney General, is an officer who oversees the
17 activities of the FBI and is sued herein in his official capacity. Defendant is charged by law with
18 the obligation of providing information for naturalization applications filed with the USCIS
19 District pursuant to 8 USC §1421, 8 USC §1427, 8 CFR §103.1, 8 CFR §310.1 and 8 CFR
20 §316.2.

21 6. Defendant Robert Mueller, Director of the Federal Bureau of Investigation ("FBI"). The
22 FBI is the agency currently charged with "clearing" aliens for immigration benefits. The USCIS
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1 regularly attributes its delays to the FBI. The Special Agent in Charge of the San Francisco
2 office may be served at his office in San Francisco, California.

3 7. Jurisdiction in this case is proper pursuant to 8 USC §§1447(b) and 1421(c), 28 USC
4 §§2201, and 8 CFR §310.5. Jurisdiction in this case is also provided pursuant to 28 USC §§1331
5 and 1361 and 5 USC §§555(b) and 706(i).

6 8. Venue is proper in this court pursuant to 28 USC §1391(e) which provides that a civil
7 action against an officer or employee of the United States or any agency of the United States
8 may be brought in the judicial district where the plaintiff resides. Plaintiff is a resident of the
9 Northern District of California. USCIS, the Department of Justice, and the FBI are agencies
10 operating within this district. Plaintiff was interviewed in Defendant USCIS's San Francisco
11 District Office.

12 9. Plaintiff is a lawful permanent resident of the United States. He is a software engineer at
13 Cisco Systems. Plaintiff's Declaration detailing the facts presented here is attached as Exhibit A.

14 10. Plaintiff filed an application for naturalization which was received by the USCIS on
15 January 31, 2006. The receipt for filing the application, dated February 8, 2006, is attached as
16 Exhibit B.

17 11. Soon after filing the naturalization application, Plaintiff was fingerprinted by Defendants
18 on March 2, 2006 in Oakland, California. The fingerprint worksheet is at Exhibit C.

19 12. Plaintiff was interviewed by USCIS at its offices in San Francisco, California on January
20 31, 2006. The immigration officer who conducted Plaintiff's interview issued a form to Plaintiff
21 at the conclusion of the interview stating that Plaintiff "passed the tests of English and US
22 history and government" but that a decision to refer his application for swearing in could not be
23 made until the FBI name check was completed. Answering the Plaintiff's question, the officer
24

1 stated that the Plaintiff may call USCIS to inquire in to the status of his application. A copy of
2 the USCIS form Plaintiff received at the interview is at Exhibit D.

3 13. Plaintiff has followed up with the Defendant by visiting the USCIS office in San
4 Francisco on October 27, 2006 and by sending a written inquiry to which USCIS replied on May
5 7, 2007. The USCIS appointment notice is at Exhibit E and the May 7, 2007 letter is at Exhibit
6 F.

7 14. On information and belief, Plaintiff's application for naturalization remains pending for
8 the receipt of an FBI name check.

9 15. Despite eligibility for naturalization, Plaintiff's application remains adjudicated and it
10 may remain undecided for years. Defendants have had all the information required to obtain a
11 security clearance for Plaintiff since his application was filed over one and a half years ago.
12 Defendants' refusal to act is arbitrary, willful and unreasonable and prejudicial to Plaintiff.

13 16. Plaintiff has a right to have Defendant adjudicate his application, and Defendant's failure
14 to do so has denied Plaintiff's his rights under 8 USC §1421 and 8 USC §1447.

15 17. Plaintiff has been and will continue to be damaged by Defendants' failure to act. As a
16 foreign national, the Plaintiff is not eligible for a U.S. passport. To travel internationally for
17 work he must apply for visas to enter these countries which often takes considerable time and
18 limits his ability to travel on short notice for his employer, Cisco. These restrictions compromise
19 his working efficiency.

20 18. Plaintiff wants to be securely settled in the United States and continue to work efficiently.
21 He wants to be able to vote and participate in other normal activities available only to U.S.
22 Citizens.

1 19. Plaintiff continues to suffer emotionally because of the working restrictions and inability
2 to become a U.S. citizen.

3 20. Defendants' inaction represents a denial of Plaintiff's application, and this Court may
4 review the matter *de novo* under 8 USC §1421(c) and §1447(b).
5

6 21. Plaintiff has exhausted his administrative remedies.

7 20. Plaintiff desires a judicial determination of his naturalization application and a
8 declaration that he is entitled to be naturalized as a citizen of the United States.

9 WHEREFORE, Plaintiff prays that:
10


11 22. The Court will hear Plaintiff's case and render a declaratory judgment requiring
12 Defendants to complete the FBI name check and declare that he is entitled to be naturalized and
13 naturalize him.

14 23. In the alternative, remand this matter with instructions to USCIS to complete the
15 adjudication of Plaintiff's application within 45 days, and if this is not accomplished, resume
16 jurisdiction and set a hearing.
17

18 24. The Court grant Plaintiff reasonable attorney's fees and such further relief as may be
19 just, lawful and equitable.
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21 DATED: August 24, 2007

Respectfully submitted,

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24 MARTIN J. LAWLER
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MARTIN J. LAWLER (CSBN 77127)
 MAXINE D. BAYLEY (DCBN 490710)
 Lawler & Lawler
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 mbayley@aboutvisas.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

Ganesh A. Vishwanath)
)
 Plaintiff,)
)
 v.)
)
 Rosemary Melville, District Director,)
 U.S. Citizenship & Immigration Services,)
)
 Dr. Emilio T. Gonzalez, Director,)
 U.S. Citizenship & Immigration Services,)
)
 Michael Chertoff, Secretary)
 U.S. Department of Homeland Security)
)
 Alberto Gonzales, Attorney General)
 U.S. Department of Justice,)
)
 Robert Mueller, Director,)
 Federal Bureau of Investigations,)
)
 Defendants.)

Civil No.

File No. A75-653-217
 WSC*001445380

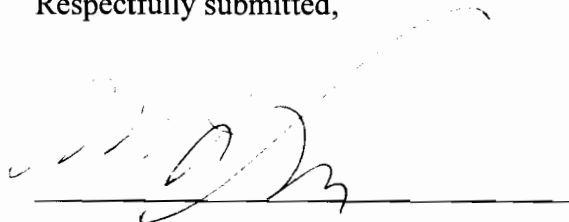
CERTIFICATE OF INTERESTED
 ENTITIES OR PERSONS

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil Local Rule 3-16, the undersigned certifies that as of this date, other than named parties, there is no such interest to report.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "M. J. Lawler", is written over a horizontal line.

MARTIN J. LAWLER

DATED: August 24, 2007

Declaration

I, Ganesh Vishwanath, hereby declare as follows:

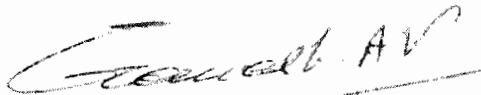
1. I reside at 34367 Tupelo Street, Fremont, California 94551. I am a citizen of India and a permanent resident of the United States.
2. I make this Declaration in support of an action for declaratory judgment by which I hope to finally obtain my citizenship.
3. I became a permanent resident of the United States on September 25, 2000. I work as a software engineering manager at Cisco Systems.
4. On January 31, 2006, I applied for naturalization with the U.S. Citizenship and Immigration Services ("USCIS"). As instructed by USCIS, I had my fingerprints taken at the Application Support Center in Oakland, California on March 2, 2006.
5. On May 31, 2006, I was interviewed at the USCIS offices in San Francisco. At the interview, the officer told me that I had passed the government civics, US history and English language tests, but that a decision to refer my appointment for swearing in could not be made until the FBI name check was received.
6. I made two inquiries on my naturalization, one in person at the San Francisco office of the USCIS on October 27, 2006 and a written inquiry. The USCIS response to my inquiring on my case, dated May 7, 2007, indicates that my application is still pending the completion of the security check despite the fact that my application remains pending more than 120 days after the interview.

7. Although I have done everything the government requested, my application remains undecided. Based on the information I was given by USCIS, the reason for the delay in deciding my application is that the name check has not been completed.
8. I want to be a U.S. citizen so I can fully participate in a professional and civic life by voting and to enjoy all the freedom and privileges citizenship brings. In particular, as citizen of India, I must obtain visas to visit many countries and this can cause considerable time and I cannot travel for work on short notice. I wish to fully enjoy the freedom provided by the U.S. Constitution including voting, which I can only do as a U.S. citizen.
9. I feel powerless to do anything to get the government to decide my application. The government has unreasonably delayed my application. The delay of my naturalization continues to cause me stress and anxiety as it brings problems for my work.

Everything in this declaration is true and correct.

8/20/2007

Date



Ganesh A. Vishwanath

EXHIBIT B

Department of Homeland Security
U.S. Citizenship and Immigration Service

I-797C, Notice of Action

THE UNITED STATES OF AMERICA



Receipt			NOTICE DATE February 08, 2006
CASE TYPE N400 Application For Naturalization			INS # A 075 653 217
APPLICATION NUMBER WSC*001445380	RECEIVED DATE January 31, 2006	PRIORITY DATE January 31, 2006	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS GANESH ALAMELUMANGAPURAM VISHWANATH 34367 TUPELO ST FREMONT CA 94555		PAYMENT INFORMATION: Single Application Fee: \$400.00 Total Amount Received: \$400.00 Total Balance Due: \$0.00	
<p> </p> <p>The above application has been received by our office and is in process. Our records indicate your personal information is as follows:</p> <p>Date of Birth: September 27, 1970 Address Where You Live: 34367 TUPELO ST FREMONT CA 94555</p> <p>Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.</p> <p>You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 460 days of this notice.</p> <p style="text-align: right;">uscis.gov</p>			
<p>If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.</p> <p>If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.</p> <p>If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.</p>			
INS Office Address: US IMMIGRATION AND NATURALIZATION SERVICE CALIFORNIA SERVICE CENTER P.O BOX 10400 LAGUNA NIGUEL CA 92607-		INS Customer Service Number: (800) 375-5283 APPLICANT COPY	
WSC001552838			

EXHIBIT C

Department of Homeland Security
U.S. Citizenship and Immigration Service

I-797C, Notice of Action

THE UNITED STATES OF AMERICA

Fingerprint Notification			NOTICE DATE February 10, 2006
CASE TYPE N400 Application For Naturalization			INS A# A 075 653 217
APPLICATION NUMBER WSC*001445380	RECEIVED DATE January 31, 2006	PRIORITY DATE January 31, 2006	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS GANESH ALAMELUMANGAPURAM VISHWANATH 34367 TUPELO ST FREMONT CA 94555 1578777 3-2-06 BIOMETRICS PROCESSING STAMP ASC SITE CODE BIOMETRICS QA REVIEW BY ON TENPRINTS FOR REVIEW BY 1578777 3-2-06			
To process your application, INS must take your fingerprints and have them cleared by the FBI. PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED. If you are unable to do so, complete the bottom of this notice and return the entire original notice to the address below. RESCHEDULING YOUR APPOINTMENT WILL DELAY YOUR APPLICATION. IF YOU FAIL TO APPEAR AS SCHEDULED BELOW OR FAIL TO REQUEST RESCHEDULING, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.			
APPLICATION SUPPORT CENTER INS OAKLAND 2040 TELEGRAPH AVE. OAKLAND CA 94612		DATE AND TIME OF APPOINTMENT 03/02/2006 09:00 AM	
WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR FINGERPRINTS TAKEN, YOU MUST BRING: 1. THIS APPOINTMENT NOTICE and 2. PHOTO IDENTIFICATION. Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, you will not be fingerprinted.			
PLEASE DISREGARD THIS NOTICE IF YOUR APPLICATION HAS ALREADY BEEN GRANTED.			
REQUEST FOR RESCHEDULING Please reschedule my appointment for the next available: <input type="checkbox"/> Wednesday afternoon <input type="checkbox"/> Saturday afternoon INS cannot guarantee the day preferred, but will do so to the extent possible. Upon receipt of your request, you will be provided a new appointment notice. Please mail your request to: INS OAKLAND 2040 TELEGRAPH AVE. OAKLAND CA 94612 If you have any questions regarding this notice, please call 1-800-375-5283.			
APPLICATION NUMBER WSC*001445380		APPLICANT COPY 	
WARNING! Due to limited seating availability in our lobby areas, only persons who are necessary to assist with transportation or completing the fingerprint worksheet should accompany you.			

U.S. Department of Justice
Immigration and Naturalization Service

Naturalization Interview Results

A#: A 075 653 217

On 8-27, you were interviewed by INS officer Wong.

- ☒ You passed the tests of English and U.S. history and government.
- ☒ You passed the test of U.S. history and government and the English language requirement was waived.
- ☐ The Service has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak / _____ read / _____ write English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on the Form N-14.
- ☐ INS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability / _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this N-400. INS will send you a written decision about your application.

A) _____ **Congratulations! Your application has been recommended for approval.** At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) X **A decision cannot yet be made about your application.**

It is very important that you:

- ✓ Notify INS if you change your address.
- ✓ Come to any scheduled interview.
- ✓ Submit all requested documents.
- ✓ Send any questions about this application in writing to the officer named above. Include your full name, A-number, and a copy of this paper.
- ✓ Go to any oath ceremony that you are scheduled to attend.
- ✓ Notify INS as soon as possible in writing if you cannot come to any scheduled interview or oath ceremony. Include a copy of this paper and a copy of the scheduling notice.

PENDING FOR
SECURITY CHECKS



Name: Ganesh Alamelumangapuram Vishwanath
Appointment Speak to immigration officer
Type:
Confirmation SFR-06-45725
No.:
Appointment October 27, 2006
Date:
Authentication 17cfc
Code:
Appointment 12:45
Time: PM
Location: 444 WASHINGTON STREET, San Francisco, CA 94111; LOBBY

**This is your Confirmation
Number:**



**If you wish to cancel this appointment, you will need the
following Personal Identification Number:
35525**

Please be on time. Failure to show up on time will result in the cancellation of your appointment. You will then need to reschedule your appointment. You will not be admitted more than 15 minutes before your scheduled appointment time.

- **You must appear in person and bring photo identification along with this appointment letter.**
- **Acceptable forms of identification are any of the following: Government issued identification, passport, valid driver's license, I-94, Work Authorization Card, or Permanent Resident Card. (Green Card)**
- **In order to serve you more efficiently, we require you to bring all applicable immigration forms, letters, receipts, translations and originals of supporting documents.**
- **NOTE: Cell phones that have camera features are not permitted in the building. Food and drinks are not permitted in the waiting room. In order to facilitate easy and swift entrance, you are advised to keep handbags and metal objects to a minimum by leave such items at home or with persons who will remain outside the building.**

U.S. Department of Homeland Security
USCIS
630 Sansome Street
San Francisco, CA 94111



**U.S. Citizenship
and Immigration
Services**

Monday, May 7, 2007

GANESH VISHWANATH
34367 TUPELO STREET
FREMONT CA 94555

Dear GANESH VISHWANATH:

On 05/04/2007 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

Caller indicated they are:	The applicant
Attorney Name:	Information not available
Case type:	N400
Filing date:	Information not available
Receipt #:	
Beneficiary (if you filed for someone else):	VISHWANATH, GANESH
Your USCIS Account Number (A-number):	A075653217
Type of service requested:	Case Status - Outside Processing Time

The status of this service request is:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the background checks are complete. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number provided below.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services

MARTIN J. LAWLER (CSBN 77127)
MAXINE D. BAYLEY (DCBN 490710)

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Attorneys for Plaintiff

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Alberto Gonzales, Attorney General
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Robert Mueller, Director,
Federal Bureau of Investigations,

Defendants.

Civil No.

File No. A75-653-217
WSC*001445380

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of Lawler & Lawler, is a person of such age and discretion to be competent to serve legal papers, and that she is causing a true copy of the following **Complaint for Declaratory Judgment of Naturalization** and all attached documents to be served on this date, via certified U.S. mail, postage pre-paid to the parties as addressed below:

Edward Olsen, AUSA
U.S. Department of Justice
450 Golden Gate Ave
10th Floor, Box 36055
San Francisco, CA 94102

Alberto Gonzales, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Rosemary Melville, Director
USCIS
San Francisco Dist. Office
630 Sansome St.
San Francisco, CA 94111

Emilio T. Gonzalez, Director
U.S. Citizenship & Immigration Services
20 Massachusetts Ave., NW
Washington, DC 20529

Michael Chertoff, Director
U.S. Dept. of Homeland Security
Washington, DC 20528

Robert Mueller, Director
Federal Bureau of Investigation (FBI)
J. Edgar Hoover Building
935 Pennsylvania Ave., NW
Washington, DC 20535-0001

DATED: August 24, 2007

Respectfully submitted,



MAXINE BAYLEY